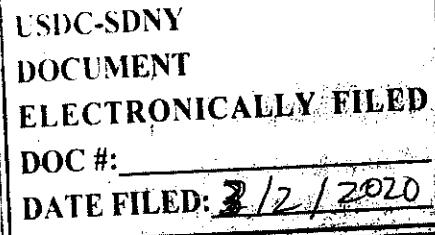


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOUND & DROWTH, LLC, a Georgia limited liability company, and JORDAN KROLICK, individually,

Plaintiff,
-v-
ALEX SLOANE and MATTHEW PERELMAN,
Defendants.



1:17-cv-00881 (RA)(SN)

**PLAINTIFF'S MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT**

Plaintiffs, TOUND & DROWTH, LLC and JORDAN KROLICK, through their undersigned counsel, move this Court for leave to file their Amended Complaint against Defendants, ALEX SLOANE and MATTHEW PERELMAN, and in support of this Motion state as follows:

1. On February 6, 2017, Plaintiffs filed their Complaint (Dkt. 1) against Defendants, Alex Sloane ("Sloane") and Matthew Perelman ("Perelman"), which included causes of action for breach of contract, breach of fiduciary duty, unjust enrichment, and alternative counts for breach of implied contract, fraud, quantum meruit, and negligent misrepresentation.
2. On April 5, 2017, Defendants Sloane and Perelman filed their Motion to Dismiss the Complaint (Dkt. 15-16). The parties fully briefed the motion thereafter.
3. On May 26, 2017, the Court entered an Order (Dkt. 43) granting Defendants' motion requesting a stay of all discovery pending resolution of the Motion to Dismiss.
4. Over two (2) years later, on July 24, 2019, the Court ordered that oral arguments on the Motion to Dismiss would take place on August 1, 2019 (Dkt. 45). Pursuant to Defendants'

Letter Motion to Adjourn Conference, oral arguments on the Motion to Dismiss were rescheduled for August 29, 2019 (Dkt. 46-47).

5. On August 29, 2019, Defendants' Motion was heard by the Court. Although no ruling was issued at that time, the Court stated that "it was prudent to bring you in and talk about the motion and my initial kind of thoughts on the case ... share some thoughts, and we can go from there." Transcript of Proceedings re: Argument Held on August 29, 2019 (Dkt. 50), p. 2.

6. Counsel for the parties attended a settlement conference before Magistrate Judge Sarah Netburn on January 23, 2020 (Dkt. 52).

7. To date the Court has not ruled on the pending Motion to Dismiss.

8. At the August 29, 2019 hearing, however, the Court preliminarily addressed potential shortcomings in the Complaint, while at the same time suggesting that even if she "dismissed all the claims at this point in time, I would likely do so without prejudice in the first instance and then plaintiff would have the opportunity to amend...". (Dkt. 50, at 21).

9. Federal Rule of Civil Procedure 15 provides that beyond 21 days after service "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2)

10. Plaintiffs' counsel has conferred with Defendants' counsel to ascertain whether Defendants' would provide written consent and thus alleviate the need for a motion seeking leave of Court to amend. Defendants do not consent to this motion.

11. Accordingly, Plaintiffs now seek leave of Court to amend their Complaint within 30 days for the purpose of adding additional factual details and claims consistent with comments provided by this Court at the August 29, 2019 hearing which include, but are not limited to: the addition of detail regarding the parties' communications and the nature of their business relationship; clarification and specificity as suggested with regard to Plaintiff's contract, joint

venture, fraud, negligent misrepresentation, breach of fiduciary duty, and quantum meruit claims; clarification and specificity regarding persons and entities as to whom plaintiff's claims are directed; and, possible inclusion or revision of causes of action and/or parties.

WHEREFORE, Plaintiffs TOUND & DROWTH, LLC and JORDAN KROLICK, respectfully request leave of Court to file an amended complaint against Defendants, ALEX SLOANE and MATTHEW PERELMAN on or before March 2, 2019, and for any other relief which this Honorable Court deems just and proper.

Dated: January 28, 2020

Respectfully submitted,
MARKS & KLEIN, LLP

/s/ Justin M. Klein
Justin M. Klein

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Application granted. Plaintiff's motion for leave to file an amended complaint is granted. The amended complaint shall be filed no later than April 2, 2020. The pending motion to dismiss is denied as moot. The Clerk of Court is respectfully directed to terminate the motions pending at docket entries 15 and 18.

SO ORDERED.


Ronnie Abrams, U.S.D.J.
March 2, 2020